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In re Application of
AVIGAD, et al.

Application No.: 10/562,527

PCT No.: PCT/IL04/00578

Int. Filing Date: 30 June 2004

Priority Date: 01 July 2003

Attorney Docket No.: 2723.001

For: PROGNOSIS DETERMINATION IN
EWING SARCOMA PATIENTS BY
MEANS OF GENETIC PROFILING

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REQUEST FOR STATUS
UNDER 37 CFR 1.42

DOCKETED 4/1/07

This decision is in response to applicant's communication filed 22 November 2006 in the United States Patent and Trademark Office (USPTO). The communication is being treated as a submission of papers pursuant to 37 CFR 1.42. No fee is required.

BACKGROUND

On 30 June 2004, applicant filed international application PCT/IL04/00578 which claimed a priority date of 01 July 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 13 January 2005. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 01 January 2006.

On 28 December 2005, applicant filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the requisite basic national fee; an unexecuted combined declaration and power of attorney and a First Preliminary Amendment.

On 19 May 2006, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was afforded two months to file the required response and advised that extensions of time were available pursuant to 37 CFR 1.136(a).

On 22 November 2006, applicant filed the declaration discussed herein accompanied by a petition for four-month extension of time and payment of the appropriate extension of time fee. Applicant has provided certification that the present filing was deposited for mailing with the United States Postal Service on 20 November 2006. As such, the present response is considered

timely filed.

DISCUSSION

Pursuant to 37 CFR 1.42, first sentence:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."


The filed declaration is executed by Haim Marx on behalf of deceased joint inventor Rina Zaizov. However the declaration is not in compliance with 37 CFR 1.497 (a)-(b) in that the declaration sets forth the residence, citizenship and post office address for only one individual. In order to comply with 37 CFR 1.497(b), this information must be provided for both the deceased inventor and the legal representative. In addition, while counsel has stated that Mr. Marx is executing the declaration as legal representative to the estate, pursuant to 37 CFR 1.497(b)(2), the relationship must be stated on the declaration itself.

CONCLUSION

Applicant's petition under 37 CFR 1.42 is **DISMISSED, without prejudice**.

Applicant is hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file an oath or declaration in compliance with 37 CFR 1.497 (a)-(b). Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.42." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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